



March 5, 1999

Ms. Tenley Aldredge
Assistant County Attorney
County of Travis
314 West 11th Street, Suite 300
Austin, Texas 78767

OR99-0637

Dear Ms. Aldredge:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122509.

Travis County (the "county") received a request for a copy of an internal affairs report. You contend that the report is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. The report at issue was provided to this office for review.

A governmental body must meet a multi-pronged test to show that particular records are subject to the section 552.103(a) exception. First, the governmental body must show that litigation is reasonably anticipated or that it is pending. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Second, the governmental body must establish how and why the exception is applicable to particular records, by showing the relationship of the subject of the underlying litigation to the records at issue. Open Records Decision No. 638 (1996). For a governmental body to meet the first prong of section 552.103, the governmental body must "furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture." Open Records Decision No. 518 at 5 (1989).

You state that section 552.103(a) is applicable because, when the requestor made his written request for records, he apparently indicated to a county employee that the records were being obtained for use by his attorney. The employee then asked if the records were to be used for litigation purposes, and the requestor indicated they were to be used in anticipation of a lawsuit against the county.¹ The fact that an individual states he plans to bring suit, without

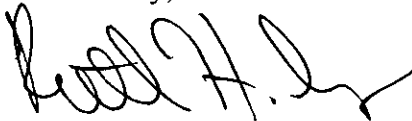
¹The particular motives of an individual requesting records is generally not part of a section 552.103(a) inquiry, as the Open Records Act does not look to the motives of any particular requestor. Gov't Code § 552.222 (governmental body may not make general inquiries of requestor). This helps to protect the purpose of the Open Records Act in providing broad access to public information, Gov't Code § 552.001, because when information is withheld from one individual, that information is likewise protected from all other members of the public. Gov't Code § 552.007 (prohibiting selective disclosure of information).

more evidence that the individual has taken objective steps toward filing suit, is not sufficient to show that litigation is reasonably anticipated. Open Records Decision No. 331 (1982). You have not shown the applicability of section 552.103(a).

You assert that the records at issue are protected under section 552.108(a)(2) and (b)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Section 552.108(b)(2) protects from disclosure internal records or notations of a law enforcement agency or prosecutor that are maintained for internal use in relation to an investigation that did not result in conviction or deferred adjudication. You explain that the documents at issue are part of an internal affairs investigation "concerning the alleged use of excessive force" and that "the allegations were held to be unfounded, and no punitive or other action was taken." However, there is no indication that there was ever a criminal investigation concerning the allegations of excessive force. Section 552.108 is generally not applicable when a complaint made against law enforcement officers does not result in a criminal investigation into the allegations. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied)(construing statutory predecessor to section 552.108). We also note that records which concern complaints about public employees and the final outcome of such complaints are generally the type of information that is considered to be public. Gov't Code § 552.022 (1); Open Records Decision Nos. 106 at 3 (1975), 139 at 2 (1976). We conclude that the records at issue must be released.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 122509

²We need not address whether any of the information implicates the complainant's privacy interests, as he is also the requestor. Gov't Code § 552.023.

Enclosures: Submitted documents

cc: Mr. Pete Castilleja
6605 Williamette
Austin, Texas 78723
(w/o enclosures)